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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

DR. NICHOLETTE KING-RABETSIMBA,
an individual;

Plaintiff(s),

v.

ALIXA RX, LLC, a Delaware limited liability
company,

Defendant(s).

Case No.:

COMPLAINT FOR DAMAGES

California Fair Employment and Housing Act
- Race Discrimination
- Retaliation
California Labor Code
- Labor Code § 1198.5
- Labor Code § 98.6

JURY TRIAL DEMANDED

TO THE HONORABLE COURT:

Plaintiff, Dr. Nicholette King-Rabetsimba, through her undersigned counsel, hereby makes the following allegations against the defendant, Alixa RX, LLC. Plaintiff seeks compensatory and punitive damages and related relief authorized by law based on the within allegations.

JURISDICTION AND VENUE

1. This Court has jurisdiction in the matter pursuant to 28 U.S.C. §§ 1332, as this proceeding arises under state law between parties of diverse citizenships and where the amount in controversy exceeds the jurisdictional amount of \$75,000.

2. This Court has venue in this matter pursuant to 28 U.S.C. § 1391(b), as a substantial part of the acts and omissions giving rise to this proceeding occurred in this judicial district.

COMPLAINT FOR DAMAGES

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3. Plaintiff has fulfilled the jurisdictional prerequisites to filing suit, including her obtaining a right to sue letters from the California Department of Fair Employment and Housing, (“DFEH”) and filing this action within the times required in those case closure/right to sue letters. Specifically, Plaintiff submitted a September 25, 2017 complaint, No. 849235-217199, which was initially closed on February 14, 2018, but then reopened and closed after an appeal on April 10, 2019. Plaintiff also submitted another complaint on November 28, 2018, No. 201807-03013925, which was closed on November 26, 2019.

PARTIES

4. Plaintiff Dr. Nicolette King-Rabetsimba (hereinafter “Plaintiff”) brings this action in an individual capacity. Plaintiff, who happens to be an African-American female, resides in the County of Fresno, State of California. Plaintiff grew up in Fresno and graduated from Clovis West High School. After high school, Plaintiff completed her bachelor's degree in Biotechnology at UC Davis, her master's degree in Biotechnology at Johns Hopkins University, and her doctorate in Pharmacy at University of Maryland, Baltimore. Plaintiff has been a licensed pharmacist in the State of California since 2006. Plaintiff is currently employed as a consultant for the California Department of Public Health and serves on the State of California's Incident Response Team. Plaintiff is also an adjunct professor at Fresno Pacific University.

5. Defendant Alixa RX, LLC (“Defendant”) is a Delaware corporation with its principal place of business situated in the Collin County, State of Texas. Defendant does business from many locations nationwide, including its Fresno, California located at 4727 W. Shaw Avenue, Fresno, CA 93722. At all times herein, Defendant was an “employer” under the definition set forth in California Government Code Section 12926, subdivision (d).

FACTUAL ALLEGATIONS

6. Plaintiff who was employed by Defendant at from October 30, 2013 until June 12, 2018. During her employment, Plaintiff was one of only two African-American pharmacists who worked at Defendant's Fresno location, and Plaintiff's only other African-American coworker was discharged in about January 2017.

1 7. During the first three years of Plaintiff's employment, she was excelling in her
2 work. Plaintiff worked for Defendant as a Staff Pharmacist, and she was making approximately
3 \$75 per hour, plus benefits. Plaintiff served intermittently as Interim Pharmacy Manager, and
4 her performance was well reviewed.

5 8. However, in early to mid-2016, Defendant changed its Fresno management team,
6 with Darlene Ervin becoming the General Manager and Amit-Kumar Jana becoming the
7 Pharmacy Supervisor. Plaintiff's work environment immediately became discriminatory and
8 hostile. In approximately May 2016, Plaintiff first sought consideration for an open position as a
9 Clinical Consultant, but her repeated requests were ignored. Plaintiff's application was never
10 considered; instead, Sophia Kim, a younger, newly licensed, non-African-American pharmacist
11 Plaintiff had trained was selected for the Clinical Consultant position. When Plaintiff
12 complained about this selection and her not even being considered for the Clinical Consultant
13 position, she was told that the younger pharmacist selected was being given the position as a
14 "training opportunity." Plaintiff's request for a similar training opportunity was ignored, and she
15 was merely advised that if another similar opportunity arose that she would be considered.
16 Plaintiff again complained about how the Clinical Consultant selection process had been
17 handled.

18 9. On June 7, 2016, Plaintiff was berated in the workplace by Soraya Samin, another
19 non-African-American pharmacist who had demonstrated, longstanding anger management
20 issues. Plaintiff complained about this incident, and there were witnesses who were able to
21 verify her account. Moreover, the incident was also recorded on the Defendant's video
22 surveillance system. Plaintiff was so distraught by the incident that she took family medical
23 leave right afterwards.

24 10. Nonetheless, in response to her complaint, Plaintiff herself was written up on June
25 22, 2016, on the false basis that she was the one who had engaged in unprofessional conduct.
26 Plaintiff's write-up threatened her with possible termination. Ms. Samin did not receive a similar
27 write-up. Plaintiff refused to sign the write-up, and she also submitted a written response
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1 disputing its findings that included complaints about this issue was being handled. Defendant
2 never responded to Plaintiff's complaint.

3 11. In the aftermath of these incidents, Plaintiff requested a complete copy of her
4 personnel file on December 23, 2016, and plaintiff did not receive a copy of her file until no
5 sooner than January 31, 2017, after she repeated her initial request. When she finally received
6 her file, Plaintiff was chagrined to see that her write-up from the June 7, 2016 was still in her
7 personnel file, despite its factual inaccuracy and her detailed responsive complaint. Plaintiff had
8 been led to believe that this inaccurate write-up had been removed from her file. Plaintiff
9 demanded that any adverse documentation related to the June 7, 2016 incident be removed, but
10 this further complaint only resulted in minor changes being made to her write-up.

11 12. Concurrent with her complaints of discriminatory treatment and her demand for
12 her personnel file, Plaintiff's conditions of employment changed. Although she had worked a
13 32-hour work week since shortly after the commencement of her employment, Plaintiff was
14 informed that increased workload would require her to work an additional eight hours per week.
15 However, Defendant had other non-African-American pharmacists who continued to work on 32
16 hours despite the alleged increased workload, and the Defendant had recently reduced its Fresno
17 pharmacy staff. It was also well known to the Defendant that Plaintiff had three young children
18 for whom she was the primary caretaker, and she also had secondary positions as a Clinical
19 Pharmacist at Community Regional Medical Center and adjunct faculty position at Fresno
20 Pacific University.

21 13. On June 3, 2017, Rene Martinez, another non-African-American pharmacist
22 angrily told plaintiff "not to fuck with" her and also called Plaintiff a "bitch" in the workplace.
23 This misconduct occurred in front of numerous other staff members and was in no way
24 provoked. Plaintiff immediately and repeatedly complained about this incident and sought
25 management's intervention and corrective action. Promises to perform "an investigation" went
26 unfulfilled. There were no consequences to Ms. Martinez, the perpetrating pharmacist.

27 14. In stark contrast to the lenient treatment of those who transgressed Plaintiff, she
28 found herself increasingly under the microscope after her 2016 and 2017 protected activities.

1 Plaintiff had her work reviewed and audited more frequently than her colleagues, even though
2 she had no history of performance problems. Plaintiff also was routinely berated and ostracized
3 in her workplace, on a regular basis.

4 15. On or about September 25, 2017, Plaintiff filed a complaint with the DFEH,
5 contending that she had been subjected to race and gender discrimination and retaliation for
6 asserting her rights under the California Family Rights Act. Defendant defended its position
7 against Plaintiff's allegations by supplying false and misleading information to the DFEH, which
8 Plaintiff pointed out in her responsive submissions.

9 16. After plaintiff's 2017 DFEH complaint, Defendant continued to engage in a
10 pattern of pervasive retaliatory and discriminatory conduct. Plaintiff continued to have her
11 performance scrutinized more closely than her colleagues, and alternately was berated and
12 ostracized. Plaintiff was counseled and reprimanded for giving work colleague with whom she
13 was friendly a momentary "side hug" in the workplace on December 1, 2017, although her
14 colleagues all behaved likewise without any adverse consequences.

15 17. On March 23, 2018, Plaintiff sent a standard inquiry to General Manager Darlene
16 Ervin regarding a billing issue. Ms. Ervin responded with an email copied to numerous staff
17 members stating, "Nicholette, as a pharmacist you can create the form. It takes seconds and can
18 be done by anyone. As the pharmacist there now, please proceed and focus on the patient!" This
19 angry and public response was totally uncalled for, and, neither Plaintiff nor any other
20 pharmacist had ever been trained to create a billing form; this had always been done by the
21 billing department. No other pharmacists were openly condescended and undermined before
22 their colleagues in this manner.

23 18. Plaintiff also complained that Ms. Ervin's response constituted an attempt by a
24 non-pharmacist to supervise a pharmacist, which was in violation of California law. Plaintiff
25 responded to Ms. Ervin and management with a detailed complaint that cited to the various
26 statutes and regulations that prohibited non-pharmacist supervision of pharmacists, and even
27 made such conduct a misdemeanor. There was never any meaningful response to this complaint.
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1 19. On or about March 29, 2018, Plaintiff was suspended without pay in relation to an
2 alleged prescription error, but she was not the responsible pharmacist. Specifically, on or about
3 March 6, 2018, there had been an error in filling a prescription medication order. On March 12,
4 2018, Pharmacy Manager Amit-Kumar Jana blamed Plaintiff and documented Plaintiff as the
5 sole pharmacist responsible on an occurrence report. However, Plaintiff learned that other
6 pharmacist Akemi Yamashita, had performed the first pharmacist review and final pharmacist
7 reviews of the computerized prescription order, whereas the prescription that Plaintiff had
8 reviewed had been cancelled before finalization. Ms. Yamashita's involvement was documented
9 by Defendant's electronic prescription workflow records and on the prescription label of the drug
10 product that was erroneously filled. Mr. Jana was already aware that Plaintiff was not responsible
11 for the prescription error at the time he wrote his occurrence report, but his report did not
12 document any other pharmacists' role.

13 20. Upon Plaintiff's return from the suspension, on or about April 5, 2018, she was
14 issued a first and final written warning by Mr. Jana. Plaintiff was the only pharmacist suspended
15 or given a first and final warning, even after she provided documentation to the Defendant that
16 another pharmacist, Ms. Yamashita, was responsible for the medication error. Only after
17 Plaintiff's complaint was Ms. Yamashita given a less severe warning, which was not
18 accompanied by a suspension. Plaintiff was also falsely told that the prescription error resulted
19 in a patient's death.

20 21. After the incident that culminated in her suspension and in light of the progression
21 of incidents since 2016, Plaintiff was in fear that she might be again set up to be responsible for
22 someone else's medication error or misconduct. Plaintiff was worried that she could potentially
23 lose her license or not be able to find another position if she was blamed for another prescription
24 error or other misconduct. This concern was heightened by Mr. Jana's questionable practices
25 pertaining to Norco prescriptions and the increasingly hostile environment Plaintiff was facing.
26 Plaintiff took leave for an extended period of time due to this stress.

27 22. As a result of this pattern of discrimination and harassment, and in an effort to do
28 what she felt was necessary to save her license and career, Plaintiff resigned from the

1 Defendant's employ on June 12, 2018. Plaintiff also filed a second complaint with DFEH on
 2 November 28, 2018, alleging that her June 2018 reprimand, suspension, and forced resignation
 3 were all due to retaliation for engaging in protected activity, including her prior complaints of
 4 discrimination.

5 23. Plaintiff suffered greatly as a result of the foregoing. Plaintiff was unable to find
 6 comparable employment for four months, and Plaintiff's current position with the California
 7 Department of Public Health pays about \$40,000 a year than what she earned with the
 8 Defendant. Plaintiff's current schedule also does not permit her to continue her adjunct faculty
 9 work at Fresno Pacific University. Plaintiff also has had to take anti-anxiety medication to deal
 10 with the stress of her situation. Plaintiff also has been chronically depressed and unable to
 11 perform her customary personal and family activities. Plaintiff also has had to obtain legal
 12 counsel to assert her rights as set forth herein.

13 CAUSES OF ACTION

14 First Cause of Action

15 California Fair Employment and Housing Act - Race Discrimination

16 24. Plaintiff incorporates the foregoing paragraphs as if set forth herein.

17 25. California law prohibits discrimination based in employment, either because of an
 18 employee's race or because an employee is not of a race or races treated more favorably.
 19 California Government Code § 12940(a). As a person who is a racial minority, Plaintiff is
 20 protected against race discrimination under California law, i.e., she has a right not to be treated
 21 inferiorly than those or other races based in substantial part of their or her race.

22 26. Plaintiff is entitled to invoke her protection against race discrimination under the
 23 California Fair Employment and Housing Act because she made a timely administrative
 24 complaints and files this action timely after receiving her right to sue letter.

25 27. Plaintiff is a protected employee under the California Fair Employment and
 26 Housing Act because she worked for Defendant as an employee in the State of California, and
 27 Defendant is an employer for purposes of this law.

1 28. Plaintiff performed her duties well at all pertinent times, as detailed above, and
2 therefore she should not have been subject to any adverse employment action based upon her
3 merits.

4 29. On a continuing basis between early 2016 and her June 12, 2018 resignation, and
5 as detailed above, Plaintiff suffered adverse employment actions, including (a) being subjected to
6 pervasive harassment and discrimination creating a hostile environment, which was based in
7 substantial part upon her race, (b) being reviewed unfairly adversely based in substantial part
8 upon her race, (c) being denied pay and benefit increases to which she should have been entitled
9 based in substantial part upon her race, (d) being threatened with termination based in substantial
10 part upon her race, and (e) being pressured to resign based in substantial part upon her race.

11 30. Comparator employees not in Plaintiff's protected class and working under
12 analogous conditions were treated more favorably. Specifically, the non-African-American
13 employees of Defendant were not harassed, reviewed adversely, threatened with termination, or
14 pressured to resign.

15 31. There is a sufficient causal connection between Plaintiff's adverse employment
16 actions and her race. As alleged above, Plaintiff is informed and believes that Defendant's
17 mistreatment of her is consistent with its company-wide practices of preferential treatment of
18 employees who are not African-American.

19 32. Despite Plaintiff's repeated complaints, as detailed above, Defendant failed to
20 intervene to prevent her from being discriminated on the basis of her race, as required by
21 California Government Code § 12940(k).

22 33. As a result of the race discrimination alleged above, Plaintiff has been greatly
23 damaged financially, as alleged above. Plaintiff also has lost future benefits to which she would
24 have been entitled but for the above-alleged race discrimination. Plaintiff also has been damaged
25 greatly non-economically, including suffering significant emotional distress, damage to work
26 reputation, stress, anxiety, hopelessness, and loss of desire to engage with friends and loved
27 ones. As a result, Plaintiff is entitled to compensatory damages, including back pay, front pay,
28 lost benefits, and general damages. Plaintiff is also entitled to an award of punitive damages

1 based on Defendant's despicable conduct in mistreating her on the basis of her race. Plaintiff is
2 also entitled to an array of statutory relief, including prejudgment interest, an award of legal fees
3 and expenses, and other relief available under California Government Code § 12965.

4 34. Plaintiff also may be entitled to injunctive relief in the form of court-ordered
5 reassignment, reinstatement and/or rehiring.

6 **Second Cause of Action**

7 **California Fair Employment and Housing Act – Retaliation**

8 35. Plaintiff incorporates the foregoing paragraphs as if set forth herein.

9 36. California law prohibits retaliation against an employee based on her making a
10 complaint protected by the Fair Employment and Housing Act. California Government Code §
11 12940(h). As a person who made complaints of mistreatment based on her protected
12 characteristics and activities, Plaintiff is protected against retaliation under California law.

13 37. Plaintiff is entitled to invoke her protection against retaliation under the California
14 Fair Employment and Housing Act because she made a timely administrative complaint and files
15 this action timely after receiving her right to sue letter.

16 38. Plaintiff is a protected employee under the California Fair Employment and
17 Housing Act because she worked for Defendant as an employee in the State of California, and
18 Defendant is an employer for purposes of this law.

19 39. Plaintiff performed her duties well at all pertinent times, as detailed above, and
20 therefore she should not have been subject to any adverse employment action based upon her
21 merits.

22 40. On a continuing basis between early 2016 and her June 12, 2018 forced
23 resignation, and as detailed above, Plaintiff suffered adverse employment actions, including (a)
24 being subjected to pervasive harassment and discrimination creating a hostile environment,
25 which was based upon her protected complaints, (b) being reviewed unfairly adversely based in
26 substantial part upon her protected complaints, (c) being denied pay and benefit increases to
27 which she should have been entitled based in substantial part upon her protected complaints, (d)
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1 being threatened with termination based in substantial part upon her protected complaints, and
2 (e) being pressured to resign based in substantial part upon her protected complaints.

3 41. Comparator employees not in Plaintiff's protected class and working under
4 analogous conditions were treated more favorably. Specifically, the non-complaining employees
5 in Defendant's administrative personnel, were not harassed, reviewed adversely, threatened with
6 termination, or pressured to resign.

7 42. There is a sufficient causal connection between Plaintiff's adverse employment
8 actions and her protected complaints. As alleged above, Plaintiff is informed and believes that
9 Defendant's mistreatment of her is consistent with its company-wide practices of retaliating
10 against complaining employees.

11 43. Despite Plaintiff's repeated complaints, as detailed above, Defendant failed to
12 intervene to prevent her from being discriminated on the basis of her prior protected complaints,
13 as required by California Government Code § 12940(k).

14 44. As a result of the retaliation alleged above, Plaintiff has been greatly damaged
15 financially, as alleged above. Plaintiff also has lost future benefits to which she would have been
16 entitled but for the above-alleged race discrimination. Plaintiff also has been damaged greatly
17 non-economically, including suffering significant emotional distress, damage to work reputation,
18 stress, anxiety, hopelessness, and loss of desire to engage with friends and loved ones. As a
19 result, Plaintiff is entitled to compensatory damages, including back pay, front pay, lost benefits,
20 and general damages. Plaintiff is also entitled to an award of punitive damages based on
21 Defendant's despicable conduct in mistreating her on the basis of her race. Plaintiff is also
22 entitled to an array of statutory relief, including prejudgment interest, an award of legal fees and
23 expenses, and other relief available under California Government Code § 12965.

24 45. Plaintiff also may be entitled to injunctive relief in the form of court-ordered
25 reassignment, reinstatement and/or rehiring.

26 **Third Cause of Action**

27 **Failure to Provide Personnel Records - California Labor Code § 1198.5**

28 46. Plaintiff incorporates the foregoing paragraphs as if set forth herein.

47. California law entitles any current or former employee to inspect and receive a copy of the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee. California Labor Code § 1198.5.

48. As a person who requested her personnel records on December 23, 2016, Plaintiff is protected under section 1198.5.

49. As alleged above, Defendant failed to comply with its statutory obligation to produce all of the requested personnel files within 30 days of their being requested.

50. Plaintiff is entitled to payment of a statutory penalty as an aggrieved employee, in addition to an award of costs and attorney's fees. The Court may also order the production of all personnel records covered by section 1198.5.

Fourth Cause of Action

Retaliation for Protected Activity – California Labor Code § 98.6

51. Plaintiff incorporates the foregoing paragraphs as if set forth herein.

52. California law protects any employee from being the subject of reprisal due to her asserting rights established or protected under the California Labor Code. *See* Cal. Labor Code § 98.6.

53. On December 23, 2016, Plaintiff asserted her rights to inspect and receive a copy of her personnel records under California Labor Code § 1198.5. Sometime shortly after January 31, 2017, Plaintiff also inspected her personnel file and complained that it had not been maintained accurately.

54. After making her request for her personnel records and inspecting her records under section 1198.5, and precisely because of that request and inspection, Plaintiff experienced retaliation, which included: including (a) being subjected to pervasive harassment and discrimination creating a hostile environment, which was based upon her protected complaints, (b) being reviewed unfairly adversely based in substantial part upon her protected complaints, (c) being denied pay and benefit increases to which she should have been entitled based in substantial part upon her protected complaints, (d) being threatened with termination based in

1 substantial part upon her protected complaints, and (e) being pressured to resign based in
2 substantial part upon her protected complaints.

3 55. As a result of the retaliation alleged above, Plaintiff has been greatly damaged
4 financially, as alleged above. Plaintiff also has lost future benefits to which she would have been
5 entitled but for the above-alleged retaliation. Plaintiff also has been damaged greatly non-
6 economically, including suffering significant emotional distress, damage to work reputation,
7 stress, anxiety, hopelessness, and loss of desire to engage with friends and loved ones. As a
8 result, Plaintiff is entitled to compensatory damages, including back pay, front pay, lost benefits,
9 and general damages. Plaintiff is also entitled to an array of statutory relief, including statutory
10 penalties, prejudgment interest, an award of legal fees and expenses, and other relief available
11 under California Government Code § 98.6.

12 **WHEREFORE, PLAINTIFF prays for a judgment as follows:**

- 13 A. For general and other compensatory damages in the amount to be proven at trial,
14 including back pay, front pay, lost benefits, and damages for loss of quality of life
15 and emotional distress;
16 B. For any applicable civil penalties;
17 C. For punitive damages in a sum sufficient to deter, as to the First, Second and
18 Fourth Causes of Action;
19 D. For available prejudgment and post-judgment interest;
20 E. For attorney fees and costs herein incurred as allowable by governing law;
21 F. For such other and further relief as the court may deem proper.

22 **DEMAND FOR A JURY TRIAL**

23 Plaintiffs demand a trial by jury of all issue so triable in this action.

24 LAW OFFICE OF KEVIN G. LITTLE

25 DATED: November 21, 2020



26 Kevin G. Little
27 Attorney for Plaintiff
28 Dr. Nicholette King-Rabetsimba

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